

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

(Amended effective January 1, 1990.)

Committee Comment - 1989

The change in the title of the rule conforms the title to the text of the rule and to the title of the corresponding Federal Rule and Uniform Rule 406. Habit is not defined in the rule, but the definition as set forth in McCormick is generally accepted and should be used in conjunction with this rule. Whereas character evidence is considered to be a "generalized description of one's disposition, or of one's disposition in respect to a generalized trait," habit describes "one's regular response to a repeated specific situation." C. McCormick, Evidence section 195 (2d ed. 1972). Whether the response is sufficiently regular and whether the specific situation has been repeated enough to constitute habit are questions for the trial court. See Lewan, Rationale of Habit Evidence, 16 Syracuse L. Rev. 39 (1964). The Court should make a searching inquiry to assure that a true habit exists. Once it is established that a habit does exist testimony as to that habit is highly probative. Such testimony has been received in Minnesota Courts. See Department of Employment Security v. Minnesota Drug Products, Inc., 258 Minn. 133, 138, 104 N.W.2d 640, 644 (1960); Evison v. Chicago, St. Paul, Minneapolis & Omaha Ry., 45 Minn. 370, 372, 373, 48 N.W. 6, 7, 11 (1891).